

STATE OF MICHIGAN  
COURT OF APPEALS

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JON BOEHMER and JOYCE BOEHMER,

Plaintiffs-Appellants,

v

NORTH BRANCH FOOD LOCKERS, INC.,

Defendant-Appellee,

and

GLENN GERWOLDS,

Defendant.

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UNPUBLISHED

October 4, 2007

No. 274002

Lapeer Circuit Court

LC No. 03-033359-NO

Before: Bandstra, P.J., and Talbot and Fort Hood, JJ.

PER CURIAM.

Plaintiffs appeal as of right the judgment of no cause of action in this negligence case. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

This case involves the claim that defendant North Branch Food Lockers, Inc., negligently handled a cow, thereby causing serious injury to plaintiff Jon Boehmer. Plaintiffs contend that the trial court erred in denying their motion in limine to admit the testimony of a proposed safety expert, Walter Cygan. We disagree.

The qualification of an expert witness, and the admissibility of the expert testimony, is within the trial court's discretion, and the trial court's decision will not be reversed absent an abuse of that discretion. *Woodard v Custer*, 476 Mich 545, 557; 719 NW2d 842 (2006). An "abuse of discretion" occurs when the decision falls outside the principled range of outcomes. *Id.*

MRE 702 provides:

If the court determines that scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training, or education may testify thereto in the form of an opinion or otherwise if

(1) the testimony is based on sufficient facts or data, (2) the testimony is the product of reliable principles and methods, and (3) the witness has applied the principles and methods reliably to the facts of the case.

There are three prerequisites to the admission of expert testimony: (1) the expert is qualified, (2) the testimony assists the trier of fact to understand the evidence or determine a fact in issue, and (3) the knowledge is in a particular area which belongs more to an expert than to the common man. MRE 702; *Wlosinski v Cohn*, 269 Mich App 303, 213; 713 NW2d 16 (2005); *Davis v Link, Inc.*, 195 Mich App 70, 74; 489 NW2d 103 (1992); *King v Taylor Chrysler-Plymouth, Inc.*, 184 Mich App 204, 215; 457 NW2d 42 (1990). The party that proffers the expert bears the burden of persuading the trial court that the expert has specialized knowledge that will aid the fact finder in understanding evidence or determining a fact in issue. *Siirila v Barrios*, 398 Mich 576, 591; 248 NW2d 171 (1976); *Davis, supra*. Plaintiffs failed to carry this burden.

We agree with the trial court that Cygan was not qualified to give expert testimony because he lacked sufficient experience concerning cattle handling and slaughterhouse operations, and because he failed to support his opinions with scientific methodology or principles. Our review of the record indicates that Cygan simply read a number of slaughterhouse safety articles to prepare to talk about safety in this particular situation. In fact, Cygan admitted that his only interaction with a cow in the previous 50 years was when he helped his friend feed one. Further, Cygan had never been qualified in any court to testify as an expert about cattle handling or slaughterhouse operations. Because Cygan's analysis lacked scientific principles, he would simply be speculating on what the ideal safety situation at the slaughterhouse would be. Such speculative testimony is properly excluded. *Phillips v Deihm*, 213 Mich App 389, 402; 541 NW2d 566 (1995).

In determining whether the expert testimony would aid the trier of fact, it is helpful to apply a common sense inquiry, i.e., whether an untrained layman would be qualified to determine intelligently and to the best possible degree the particular issue without enlightenment from experts. *People v Smith*, 425 Mich 98, 106; 387 NW2d 814 (1986). This was a rather ordinary negligence case in which plaintiffs alleged in their complaint that defendant had a duty to plaintiff as a business invitee to exercise reasonable care to protect him from injury from foreseeable dangers, but that it negligently maintained the premises and safety procedures, and thus proximately and directly caused plaintiff's serious injuries. In cases of ordinary negligence, the jury is competent to decide what a reasonable person would do. *Bishop v St John Hosp*, 140 Mich App 720, 724-725; 364 NW2d 290 (1984). In the present case, the jury could determine whether plaintiffs' allegations were true without the assistance of an expert. We conclude that Cygan's testimony was unnecessary and would not have assisted the trier of fact.

We affirm.

/s/ Richard A. Bandstra  
/s/ Michael J. Talbot  
/s/ Karen M. Fort Hood